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SUPREME COURT, U.S.**

**IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term, 1983**

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**ROBYN LEROY PARKS,**

**Petitioner,**

**83-6453**

**-v-**

**STATE OF OKLAHOMA,**

**Respondent.**

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**WRIT OF CERTIORARI TO  
THE OKLAHOMA COURT OF CRIMINAL APPEALS  
PETITION FOR WRIT OF CERTIORARI**

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320 Robert S. Kerr  
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(405) 236-2147, ext. 582**

**COUNSEL FOR PETITIONER**

I.  
QUESTIONS PRESENTED

1. Can a state appellate court consistent with the Sixth and Fourteenth Amendments to the United States Constitution determine effectiveness of counsel in a capital sentencing proceeding without an evidentiary hearing where allegations clearly demonstrate ineffectiveness of counsel on the part of Petitioner's trial counsel?

2. Can a state appellate court consistent with the Sixth, Eighth and Fourteenth Amendments to the United States Constitution adjudge the competency of counsel under a mockery of justice standard without violating petitioner's constitutional rights?

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Petitioner prays that a Writ of Certiorari issue to review the judgment of the Oklahoma Court of Criminal Appeals entered in this case on the 25th day of January, 1984.

OPINION BELOW

The opinion of the Oklahoma Court of Criminal Appeals is an unpublished order. It is annexed as Appendix A to this petition. The order denying petitioner's post-conviction relief application in the trial court is an unpublished order annexed as Appendix B to this petition.

JURISDICTION

The judgment of the Oklahoma Court of Criminal Appeals denying post-conviction relief was entered on January 25, 1984. The trial court had previously denied post-conviction relief on July 8, 1983. This Court previously denied certiorari on petitioner's direct appeal on January 17,

1983, \_\_\_ U.S. \_\_\_ 103 S.Ct. 800 (1983). The issues addressed in this petition were not addressed in Petitioner's original certiorari petition because the claims of ineffectiveness of counsel required an evidentiary hearing 1/ in counsel's belief. The Oklahoma Court of Criminal Appeals affirmed petitioner's direct appeal in Parks v. State, 651 P.2d 686 (Okla.Cr. 1982). Jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

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1/ According to footnote number one to petitioner's rehearing petition on direct appeal, counsel's ineffectiveness can not conclusively be demonstrated absent an evidentiary hearing on post-conviction.

CONSTITUTIONAL AND STATUTORY  
PROVISIONS INVOLVED IN THIS CASE

This case involves the Fourteenth Amendment to the Constitution of the United States which provides, in relevant part:

"...Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any persons within its jurisdiction the equal protection of the laws."

The Sixth Amendment to the United States Constitution provides in relevant part:

"In all criminal prosecutions, the accused shall enjoy the right to have a speedy and public trial, by impartial jury of the state and district wherein the crime shall have been committed...; and to have the assistance of counsel for his defence."

The Eighth Amendment to the Constitution of the United States which provides, in relevant part:

"Excessive bail shall not be required,... nor cruel and unusual punishments inflicted."

This case also involves provisions of the Oklahoma Statutes.

1. O.S. 21 §701.7 Murder in the first degree.

A. A person commits murder in the first degree when he unlawfully and with malice aforethought causes the death of another human being. Malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

B. A person also commits the crime of murder in the first degree when he takes the life of a human being, regardless of malice, in the commission of forcible rape, robbery with a dangerous weapon, kidnapping, escape from lawful custody, first degree burglary or first degree arson.

2. O.S. 21 §701.9 Punishment for murder.

A. A person who is convicted of or pleads guilty or nolo contendere to murder in the first degree shall be punished by death or by imprisonment for life.

### STATEMENT OF THE CASE

The petitioner, ROBYN LEROY PARKS, was convicted of murder in the first degree in violation of 21 O.S. 701.7. The jury, after finding the sole aggravating circumstance that the murder was committed to avoid lawful arrest or prosecution, sentenced the defendant to death for this murder. 2/

### THE EVIDENCE ON POST-CONVICTION RELIEF

No evidentiary hearing was afforded Petitioner by the District Court on his application for post-conviction relief. The Oklahoma Court of Criminal Appeals assumed all the facts alleged in Petitioner's application for post-conviction relief were true. The Court held Petitioner was not denied effective assistance of counsel at the punishment stage of his bifurcated capital murder trial, despite his attorney failing to put on evidence in mitigation, failing to investigate before trial the facts the State intended to use in order to attain the death penalty and failing to object to prejudicial argument and evidence and despite the fact counsel was physically exhausted as a result of physical illness.

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2/ Of the 47 people sentenced to death in Oklahoma as of the time of petitioner's rehearing petition, Petitioner was the sole person sentenced to death with a finding of only this aggravating circumstance, Brief in Support of Petition for Rehearing (September 23, 1982).



HOW THE FEDERAL QUESTIONS WERE  
RAISED AND DECIDED BELOW

1. Petitioner requested in his application for post-conviction relief, an evidentiary hearing to determine the effectiveness of his trial counsel for purposes of appellate review on the issue of sentencing. The trial court denied this request holding that petitioner's application failed to show sufficient reason why any of his grounds were not asserted in the direct appeal. The Oklahoma Court of Criminal Appeals did not agree with the trial court's finding of lack of reason for not raising the claims of ineffectiveness of counsel prior to post-conviction relief. However, the court concluded that an evidentiary hearing was not necessary on the claim of ineffectiveness of counsel because assuming the facts as alleged by Petitioner were true, they would not support a claim of effectiveness of counsel.

2. The Oklahoma Court of Criminal Appeals, addressed the merits of the issue of counsel's effectiveness, assessing the effectiveness of counsel without stating what standard they were applying in its opinion. However, the Court of Criminal Appeals cited Stafford v. State, 665 P.2d 1205 (Okla. Cr. 1983) 3/ in assessing counsel's effectiveness. Petitioner had contended on appeal to the Oklahoma Court of Criminal Appeals that he was denied effective assistance of counsel in the punishment stage of his bifurcated trial, in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

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3/ In Stafford, the Oklahoma Court of Criminal Appeals judged counsel's competency under the mockery of justice standard stating the reasonably competent standard was to be applied prospectively only.



REASONS FOR GRANTING THE WRIT

I.

THIS COURT SHOULD GRANT CERTIORARI TO CONSIDER WHETHER AN EVIDENTIARY HEARING IS REQUIRED UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION TO MAKE A DETERMINATION ON EFFECTIVENESS OF COUNSEL WHERE SUFFICIENT ALLEGATIONS DEMONSTRATE INEFFECTIVENESS.

Petitioner was sentenced to death before an Oklahoma County trial jury for the crime of murder in the first degree on a finding of a single aggravating circumstance, the murder was committed to avoid lawful arrest or prosecution. This aggravating circumstance standing alone, has not warranted the death sentence in any other capital murder trial in Oklahoma. (Appendix 1 to Petitioner's petition for rehearing).

Petitioner on rehearing before the Oklahoma Court of Criminal Appeals, contended that the death penalty was imposed under the influence of passion, prejudice and other arbitrary factors. 4/

In the instant case on post-conviction relief, petitioner requested an evidentiary hearing on allegations dealing with the effectiveness of counsel. These included failure to present mitigating witnesses, failure to properly prepare for the punishment stage of the proceeding and the physical illness of defense counsel. Counsel's request for an evidentiary

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4/ Counsel contended "at present the record may not conclusively demonstrate constitutionally ineffective assistance of counsel under the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the law on competency of counsel as stated by this Court in Johnson v. State, 620 P.2d 1311 (Okla. Cr. 1980) and absent a post-conviction evidentiary hearing, appellate counsel does not believe he can properly litigate the competency of the counsel issue inasmuch as medical records of the attorney who tried the case and the physical condition of the attorney who tried this case and other factors need to be thoroughly developed at an evidentiary hearing."

hearing was necessary to effectively demonstrate prejudice. 5/

An evidentiary hearing in the instant case is necessary to demonstrate the critical area of lack of investigation in the preparation on the part of defense counsel which is a critical means of determining effectiveness of counsel. See United States V. Porterfield, 624 F.2d 122 (10th Cir. 1980).

Effective assistance must include zealous advocacy and informed grasp of the law and facts pertinent to sentencing issues based upon an adequate investigation. See Comment, Adequacy of a Criminal Defense Lawyer's Preparation for Sentencing (1981 Ariz. St. L.J. 585, 608.

From just a review of the trial record in the instant case, it is impossible to show prejudice under whatever standard this Court should decide in Strickland v. Washington absent an evidentiary hearing. Further, the Oklahoma Court of Criminal Appeals holding fails to mention prejudice or lack thereof.

Failure to grant Petitioner an evidentiary hearing rendered any discussion of effectiveness of counsel incomplete. The findings of the Oklahoma Court of Criminal Appeals that counsel was competent absent an evidentiary hearing, is inconsistent with the Sixth and Fourteenth Amendments to the United States Constitution to effective assistance of counsel. This Court should grant certiorari and hold under the Sixth and Fourteenth Amendments that where sufficient allegations demonstrate a claim of ineffectiveness of counsel, a hearing must be had on these allegations to determine their validity and any resulting prejudice.

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5/ Petitioner is aware that this Court currently has before it the case of Strickland v. Washington, 82-1554 where one issue involves a determination of what standard of prejudice is required upon a showing of ineffectiveness of counsel. Petitioner in the instant case, believes that either under the standard argued by petitioner or respondent before the Supreme Court in Strickland v. Washington that Petitioner in the instant case would satisfy the requirements.

II.

THIS COURT SHOULD GRANT CERTIORARI TO  
DETERMINE THE APPROPRIATE STANDARD FOR  
REVIEW OF CLAIMS OF INEFFECTIVE  
ASSISTANCE OF COUNSEL.

The Oklahoma Court of Criminal Appeals in the instant case did not state what standard they used in determining that counsel was effective. However, the Court did cite Stafford v. State, 665 P.2d 1205 (Okla. Cr. 1983) as supporting its decision that counsel was effective. In Stafford, the Oklahoma Court of Criminal Appeals applied the mockery of justice standard to determine Stafford's trial counsel's performance despite the fact that the Oklahoma Court of Criminal Appeals adopted the reasonably competent assistance of counsel test approximately three years before. See Johnson v. State, 620 P.2d 1311 (Okla. Cr. 1980). The Oklahoma Court of Criminal Appeals stated in Stafford that the reasonably competent assistance of counsel test was to be applied prospectively only. 6/

This Court is currently faced with determining the correct standard for review of claims of ineffective assistance of counsel. See Strickland v. Washington, 82-1554, 693 F.2d 1243 (5th Cir. en banc). Counsel requests that this Court grant certiorari and reverse the Oklahoma Court of Criminal Appeals for following the sham, mockery of justice standard in

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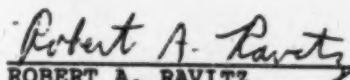
6/ This interpretation appears to be inconsistent with the Tenth Circuit Court of Appeals' interpretation of effectiveness of counsel and the prospective application of said standard. See Runnels v. Hess, 653 F.2d 1364 (10th Cir. 1981) and Gaines v. Hess, 662 F.2d 1371 (1981) requiring the following of the reasonably competent assistance of counsel test to cases tried prior to its enunciation of that standard in Dyer v. Crisp, 613 F.2d 275 (10th Cir. 1980).

determining effective assistance of counsel under the Sixth and Fourteenth Amendments. Assuming the factors the Oklahoma Court of Criminal Appeals assumed as being true in the instant case that (1) the trial attorney was exhausted as a result of physical illness and did not properly prepare for a bifurcated capital murder trial; (2) that the attorney failed to put on evidence in mitigation; (3) the attorney failed to investigate before trial, the facts the State intended to use in order to obtain the death penalty; and (4) the trial attorney failed to object to prejudicial argument and evidence in the second stage, the jury was not allowed to consider, on the basis of all relevant evidence not only why the death sentence should be imposed, but also why it should not be imposed. The jury was not given all possible relevant information about the individual defendant whose fate it had to determine. Lockett v. Ohio, 438 U.S. 586. The Oklahoma Court of Criminal Appeals has effectively abolished the requirement that a criminal defendant receive effective assistance of counsel by virtue of its holding in the instant case. This Court should grant certiorari and reverse the judgment of the Oklahoma Court of Criminal Appeals.

#### CONCLUSION

For the reasons stated above, the petitioner requests a writ of certiorari be granted.

Respectfully submitted,

  
ROBERT A. RAVITZ  
First Assistant Public Defender  
Oklahoma County  
320 Robert S. Kerr-409  
Oklahoma City, Oklahoma 73102  
(405) 236-2727, ext. 582

COUNSEL FOR PETITIONER

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

JAN 25 1984

Ross N. Lillard, Jr.  
CLERK

ROBYN LEROY PARKS,

Petitioner,

-vs-

THE STATE OF OKLAHOMA,

Respondent.

No. PC-83-461

ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF

Petitioner was convicted in Oklahoma County District Court, Case No. CRF-77-3159, of Murder in the First Degree and received the death penalty. This Court affirmed that judgment and sentence in Parks v. State, 651 P.2d 686 (Ok1.Cr.1982). On July 8, 1983, the District Court denied Petitioner's application for post-conviction relief based on a finding that he failed to show sufficient reason why his grounds for relief had not been asserted on direct appeal. Petitioner argues that the issues raised in his application are of such a character that they can be properly addressed only with the aid of an evidentiary hearing. He asks that this Court vacate the District Court's denial of post-conviction relief, and remand for an evidentiary hearing.

Of the ten grounds for relief asserted in his application, eight clearly could have been raised on direct appeal. Therefore, we will discuss only the remaining two grounds.

First, Petitioner asserts that, while still a juvenile, he was convicted of a felony without having been certified as an adult. He argues that this "unconstitutional" conviction was used to enhance his punishment. This Court has held that a person seeking to have his present sentence modified after it has been enhanced by a prior invalid juvenile conviction "must be able to state to the District Court some reason to believe that certification would have been denied if a certification hearing had been held." Edwards v. State, 591 P.2d 313, 322-23 (Ok1.Cr.1979). We find no such reason



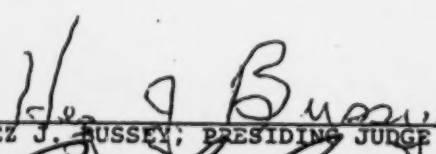
in Petitioner's application or supporting brief. Furthermore, Petitioner's punishment was not enhanced within the meaning of Edwards. Edwards concerns the Second and Subsequent Offenses statute, 21 O.S.1981, § 51, which authorizes increased punishment for recidivists. In Petitioner's case, however, evidence of his allegedly invalid conviction was used, not to enhance punishment, but to rebut testimony as to Petitioner's good character.

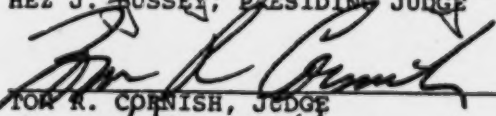
Secondly, Petitioner argues that he was denied effective assistance of counsel at the punishment stage of his bifurcated capital murder trial when his attorney failed to put on evidence in mitigation, failed to investigate before trial the facts the State intended to use in order to attain the death penalty, and failed to object to prejudicial argument and evidence. Also, he claims the trial attorney was exhausted as a result of physical illnesses. He argues that at an evidentiary hearing he would be able to produce evidence to support his claims.

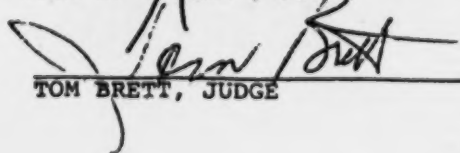
We have carefully reviewed the facts alleged in support of these claims. It is enough to say that, even assuming that the facts are as alleged by appellant, his claim is without merit. Cf Stafford v. State, 665 P.2d 1205 (Okla.Cr.1983).

The order appealed from is AFFIRMED. The request for oral argument is denied.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 25<sup>th</sup> day of January, 1984.

  
HEZ J. BUSSEY, PRESIDING JUDGE

  
TOM R. CORNISH, JUDGE

  
TOM BRETT, JUDGE

ATTEST:

  
Clerk

## STATE OF OKLAHOMA

ROBYN LEROY PARKS,

Petitioner,

vs.

THE STATE OF OKLAHOMA,

Respondent.

Case No. CRF-77-3159

ORDER DENYING POST-CONVICTION RELIEF

The Petitioner seeks post-conviction relief and sets forth sixteen different grounds for affording the relief which he seeks. The Petitioner is presently incarcerated because of a conviction of a jury trial for the offense of Murder In The First Degree in this case for which he received a sentence of death.

The Petitioner appealed his conviction and the judgment and sentence were affirmed by the Court of Criminal Appeals on the 26th day of August, 1982, in their case number F-79-3. The Petitioner may not now have a second appeal under the mask of a Post-Conviction Application as this is exactly what 22 O.S. Sec. 1086 and Rule 4.1 of the Rules of the Court of Criminal Appeals meant to prevent. Title 22 O.S. Sec. 1051, provides for a direct appeal and the Petitioner may not, thereafter assert error in a piecemeal-fashion under a post-conviction route as this would largely supersede the remedy of appeal and render meaningless the procedure inacted for a regular appeal. Ellington vs. Crisp, 547 P.2d 391 (1976).

The language of the last paragraph was taken almost verbatim from this case.

The petitioner's Application failed to show sufficient reason why any of his sixteen grounds were not asserted in the direct appeal and, accordingly, the Application for Post-Conviction Relief is denied on this 7th day of July, 1983, for the reasons stated above.

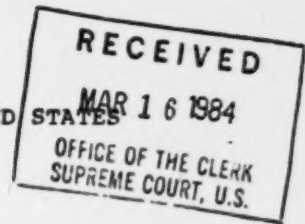
*William S. Myers, Jr.*  
WILLIAM S. MYERS, JR.



83-6453

CASE NO. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1983



ROBYN LEROY PARKS, Petitioner

**ORIGINAL**

v.

THE STATE OF OKLAHOMA, Respondent.

ON WRIT OF CERTIORARI TO THE OKLAHOMA COURT OF  
CRIMINAL APPEALS

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Petitioner, ROBYN LEROY PARKS, moves that the Court grant leave for him to proceed in forma pauperis. As grounds for this Motion, the Petitioner would state that he is currently confined in a penal institution and is unable to pay the fees and costs associated with seeking review of this Court. The factual grounds for this Motion are further detailed in the Affidavit of the Petitioner to be filed forthwith.

For the reasons stated, the Petitioner requests that this Motion be granted.

Respectfully submitted,

*Robert A. Ravitz*

ROBERT A. RAVITZ  
409 County Office Building  
320 Robert S. Kerr  
Oklahoma City, Oklahoma 73102  
(405) 236-2727, ext. 582

COUNSEL FOR PETITIONER

IN THE SUPREME COURT OF THE UNITED STATES

ROBYN LEROY PARKS,

Petitioner,

v.

STATE OF OKLAHOMA,

Respondent.

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SUPREME COURT, U.S.

**ORIGINAL**

AFFIDAVIT IN SUPPORT OF MOTION  
TO PROCEED IN FORMA PAUPERIS

I, ROBYN LEROY PARKS, being first duly sworn, state that I am Petitioner in the above entitled case; that in support of my motion to proceed without being required to pay fees, costs, or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress.

I was previously granted leave to proceed without costs, on grounds of poverty, during proceedings on this case in the Oklahoma Court of Criminal Appeals.

I further swear that the responses which I have made to the questions below relating to my ability to pay the cost of prosecuting the appeal are true:

1. Are you presently employed?

Answer: No, I am presently in the custody of the Oklahoma Department of Corrections, serving the sentence for which I am petitioning the Court for review. I have been imprisoned since 11-17-78.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest dividends, or other sources?

Answer: No.

3. Do you own any cash or checking or savings account?

Answer: Yes, my institutional account currently contains \$ 23.53 .

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

Answer: No.

5. List the persons who are dependent upon you for support and state your relationship to these persons.

Answer: None.

I understand that a false statement or answer to any questions in this Affidavit will subject me to penalties for perjury.

Robyn L. Parks  
ROBYN LEROY PARKS

STATE OF OKLAHOMA       )  
                                  ) SS:  
COUNTY OF PITTSBURG    )

Subscribed and sworn to before me on this 16 day of March, 1984.

James C. Eastham  
Notary Public

My Commission Expires:

6-25-85